

RESOLUTION NO. 17-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A CONDITIONAL USE PERMIT TO ALLOW A WINE AND BEER BAR AND OUTDOOR WINE AND BEER BAR WITH OUTDOOR RECREATION AT 70 EAST FOURTH STREET AND VACANT LOT AT THE SOUTHWEST CORNER OF FOURTH AND DEPORT STREET IN THE CENTRAL BUSINESS DISTRICT (APN 726-13-029 & 726-13-030)

WHEREAS, such request was considered by the Planning Commission at its regular meeting of January 24, 2017, at which time the Planning Commission approved application UP2016-0018: Fourth – Navarro; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The approved Conditional Use Permit is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Existing Facilities of the CEQA Guidelines.

SECTION 3. The approved conditional use has been found consistent with the criteria for use permit approval contained in Section 18.54.050 of the Zoning Code. The basis and the findings are set forth in the staff report for this item in the Planning Commission Meeting of January 24, 2017, which findings were duly considered by the Commission and are hereby adopted.

SECTION 4. The use shall be expressly conditioned on conformance to conditions incorporated herein and as attached as Exhibit “A”.

PASSED AND ADOPTED THIS 24 TH DAY OF JANUARY 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

WAYNE TANDA, Chair

Date: _____

A F F I D A V I T

I, John R. Navarro, applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

John R. Navarro, Applicant

Date: _____

EXHIBIT "A"

STANDARD CONDITIONS

APPLICATION: UP2016-0018 Fourth-Navarro

THE FOLLOWING ARE STANDARD CONDITIONS OF APPROVAL THAT MUST BE MET PRIOR TO THE ISSUANCE OF BUILDING PERMITS AND/OR SITE DEVELOPMENT PERMITS EXCEPT AS MAY BE SPECIFIED IN THE CONDITIONS. THE APPROVAL REQUIREMENTS INCLUDE THESE REQUIREMENTS AND ANY SPECIAL CONDITIONS THAT ARE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS. APPLICANTS ARE REQUIRED TO SIGN THE APPROVAL CERTIFICATE/RESOLUTION FORM INDICATING THEY UNDERSTAND AND AGREE TO IMPLEMENT THESE STANDARD CONDITIONS AND ANY SPECIAL CONDITIONS APPLIED TO THEIR PERMIT APPROVAL.

ACRONYMS:

MHMC – Morgan Hill Municipal Code

MHARH – Morgan Hill Architectural Review Handbook

PLANNING DIVISION

I. TIME LIMITS

- A. The Conditional Use Permit approval granted for Phase I (indoor wine and bar area) as described in the Planning Commission Staff report dated January 24, 2017 shall remain in effect for 12 months to January 24, 2018. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted prior to the expiration date. **(MHMC 18.54.070 A, B)**
- B. The Conditional Use Permit approval granted for Phase II (outdoor bar area) as described in the Planning Commission Staff report dated January 24, 2017 shall remain in effect for 24 months to January 24, 2019. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted prior to the expiration date. **(MHMC 18.54.070 A, B)**
- C. In accordance with Section 18.54.090 of the Municipal Code, the Development Services Department shall conduct an annual review of the approved use for compliance with specified conditions. The Department may initiate corrective action as specified in the aforementioned Code Section if necessary to ensure compliance with said conditions. **(MHMC 18.54.090)**

II. SITE DEVELOPMENT

- A. FINAL SITE DEVELOPMENT PLANS: Final site development plans and/or modifications to the exterior building shall be reviewed and approved by the Development Services Department as required through a Design Review Permit prior to issuance of a building permit.

III. OTHER CONDITIONS

- A. The Conditional Use Permit is approved solely for the operation of the wine and beer tasting room, retail sales of wine and beer, and outdoor recreation area as described in the applicants proposed statement of operations on file with the Planning Division dated December 22, 2016 (Application UP2016-0018: Fourth-Navarro) and as shown in the area depicted on the illustrations in the set of plans date stamped January 18, 2017. Any expansion, intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon amendment of this Conditional Use Permit or approval of a separate Conditional Use Permit application.
- B. The project in its entirety (Phase I and Phase II or any portion thereof) shall be fully operated by one individual or business entity. An amended conditional use permit and/or additional conditional use permits shall be approved for establish the use or operations for each individual or business entity.
- C. DEFENSE AND INDEMNITY: Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this Condition Use Permit approval. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- D. MITIGATION FEE ACT: Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is

also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun.

- E. Submit two (2) signed copies of Resolution No. _____ to the Planning Division prior to issuance of building permits.
- F. The sale of alcohol shall be limited to the onsite and offsite sales of BEER AND WINE ONLY in accordance with the licensing requirements of the California Department of Alcoholic Beverage Control (ABC). Any change to the type of ABC license for the purposes of selling or serving distilled spirits would require an amendment to the Use Permit.
- G. No amplified sound is permitted in the outdoor bar/recreation area.

ENGINEERING DIVISION

- A. Public Works Impact fees may be required for this project and must be paid prior to the issuance of Building Permit
- B. The project will be required to meet Stormwater Development Standards.
- C. Project shall reimburse City for public improvements installed along 4th Street and Depot Street.

BUILDING DIVISION

- A. The owner or designee shall follow all applicable building codes.
- B. This building will require a structural analysis as prescribed in Chapter 34 CBC.

POLICE DEPARTMENT

- A. The applicant shall comply with applicable provisions of the City's building security ordinance. Exterior lighting shall comply with criteria specified in the Design Review Ordinance. **(MHMC 18.74.050)**
- B. Entertainment as defined in Section 5.28 of the Morgan Hill Municipal Code may not be conducted on-site unless the establishment has applied and gained approval for an Entertainment Permit and satisfied all conditions of approval prior to the commencement of such use per Section 5.28 of the Morgan Hill Municipal Code.

- C. Prior to the issuance of a building permit, a Security and Safety Management Plan shall be submitted and reviewed by the Morgan Hill Police Department to the satisfaction of the Chief of Police.